

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
DAVID L. DOWNING**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD73103

DATE: October 25, 2011

Appeal From:

Johnson County Circuit Court
The Honorable R. Michael Wagner, Judge

Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin,
Judges

Attorneys:

Shaun J. Mackelprang and Richard A. Starnes, Jefferson City, MO, for respondent.

John H. Edmiston, Warrensburg, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

DAVID L. DOWNING,

APPELLANT.

No. WD73103

Johnson County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

David Downing appeals from the trial court's judgment convicting and sentencing him on a charge of driving while intoxicated as a prior and persistent offender. Downing claims that the trial court erred in denying his motion to strike his persistent offender status because, pursuant to section 577.023, his 2004 offense for driving while intoxicated could not be used for enhancement purposes as he was ordered to pay a fine in addition to receiving a suspended execution of sentence and being placed on probation.

AFFIRMED.

Division Two holds:

(1) The plain language of section 577.023.16 supports the conclusion that the 2004 offense was properly treated as a prior conviction for enhancement purposes because it was disposed of by a suspended execution of sentence and probation.

(2) Section 577.023.16 envisions that a combination of listed dispositions will qualify a conviction as a "prior conviction" for enhancement purposes. The phrase "or any combination thereof" cannot be reasonably construed to suggest that if an unlisted means of punishment (for example a fine, treatment, or community service) is imposed in combination with one or more listed means of punishment, the conviction no longer qualifies as a "prior conviction" for enhancement purposes.

Opinion by: Cynthia L. Martin, Judge

October 25, 2011

This summary is UNOFFICIAL and should not be quoted or cited.
